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EXAMINER

BRITTAIN, JAMES R

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 10

Application Number: 09/867,495
Filing Date: May 31, 2001
Appellant(s): ANDERSON, TODD

MAILED

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GROUP 3600

Joseph H. McGlynn
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed January 30, 2003.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

No amendment after final has been filed.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is substantially correct. The changes are as follows:

I. The first issue is whether claim 5 is unpatentable under 35 U.S.C. 103(a) as being unpatentable over Vasilopoulos (US 5722125) in view of Thurston (US 1195874).

II. The second issue is whether claim 4 is unpatentable over Vasilopoulos (US 5722125) in view of Thurston (US 1195874) as applied to claim 5, and further in view of De Witt (US 2931084).

(7) *Grouping of Claims*

The rejection of claim 5 stands or falls together with the rejection of claim 4 because appellant's brief does not include a statement that this grouping of claims does

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not stand or fall together with that of claim 4 and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

1,195,874	Thurston	8-1916
2,931,084	De Witt	4-1960
5,722,125	Vasilopoulos	3-1998

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Vasilopoulos (US 5722125) in view of Thurston (US 1195874).

Vasilopoulos (figure 2) teaches fastener structure comprising one bungee cord 30 (col. 2, line 4; col. 3, line 39) with a hook 50 at a first end and an alligator clip 92 (col. 4, line 55) at the second end. The alligator clip appears to have teeth, a pivot pin and is biased (col. 4, line 58). The alligator clip is fully capable of being utilized to secure the second end of the bungee cord to a support. The difference is that it is not stated that the clip has a pivot pin and the spring is not shown as wound around the pivot with the spring having a pair of arms with an arm engaging an outside surface of each jaw. However, Thurston (figures 2, 3) teaches the use of such a clip secured to a tether with a pivot pin 5 and a spring 6 having a pair of arms extending over the outside surfaces of the jaws so as to better engage the secured material. It would have been obvious to

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modify the fastener of Vasilopoulos to utilize such a well known configuration for an alligator clip at the end of a resilient cord in view of Thurston (figures 2, 3) teaching the use of such a clip with a pivot pin 5 and a spring 6 having a pair of arms extending over the outside surfaces of the jaws so as to better engage the secured material.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Vasilopoulos (US 5722125) in view of Thurston (US 1195874) as applied to claim 5 above, and further in view of De Witt (US 2931084).

Further modification of the fastener of Vasilopoulos such that the teeth extend across the inside surface of the jaws would have been obvious in view of De Witt (figures 3, 4) in which the inside surfaces of the jaws 25 have ridges 26 extending across their inside surfaces so as to enhance the gripping across the entire inside surface.

(11) Response to Argument

Appellant argues that claim 5 requires, "said second end having means for securing said second end to a support" (claim 5, line 4-5), and that this structure is missing from Vasilopoulos. Appellant argues that since the alligator clip of Vasilopoulos is disclosed to secure articles such as the bill of a hat or a glove, these articles can not be considered to be a support as claimed in claim 5 (second paragraph of the arguments on page 5 of the brief). This is an issue of interpreting this element, as set forth in the above quoted passage, in the claim. The element set forth in the limitation "said second end having means for securing said second end to a support" does not invoke 35 U.S.C. 112, sixth paragraph because the phrase has been modified by

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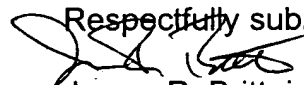
detailed claimed structure for achieving the specified function. The remainder of claim 5, beginning with the passage "said means for securing said second end to a support comprising a first and second jaw" (claim 5, lines 6-7) and following to the end of the claim, provides detailed structure of the clasp that is the means for securing the second end to a support. The list of structure underlying the "means for securing said second end to a support" provides a detailed recitation of the structure for performing the securing function that removes this element from the purview of 35 U.S.C. 112, sixth paragraph. See *Rodime PLC v. Seagate Technology, Inc.* 174 F.3d 1294, 1303-04, 50 USPQ2d 1429, 1435-36 (Fed. Cir. 1999). The limitation has the weight of a statement of intended use.

Appellant further argues that it would not have been obvious to use the clip 92 of Vasilopoulos to secure to a support. Review of the specification indicates the generic expectation of usage appellant anticipates for his clasp. The Summary of the Invention on page 2 states: "The clasp has a pair of pivoted jaws with teeth on at least one of the jaws for securing the other end of the bungi cord to an object" (lines 12-14); and "It is an object of the present invention to provide a new and improved tie down that is more versatile in attaching various objects" (lines 17-18). The emphasis placed by appellant's specification stating the clasp secures a generic object and that the tie down is more versatile in attaching various objects defines a broad field of analogous art since clasps are versatile in attaching a tie down to various objects and the bungee cord of Vasilopoulos shows the versatility and is analogous art through its structural overlap and its functional overlap in the use of the clasp at the end of the bungee cord to secure

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various objects. The device of Vasilopoulos is clearly capable of performing the intended use of securing the bungee cord to a support so that the statement of intended use is met.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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JRB
April 4, 2003

Conferees

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TK 

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